

RESOLUTION NO. 13-232

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA, APPROVING A JOINT FUNDING AGREEMENT RELATED TO A THIRD-PARTY ASSESSMENT OF C-51 RESERVOIR COSTS BETWEEN PALM BEACH COUNTY AND SEVERAL UTILITIES; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, for the last several years, a number of local utilities, engineering consultants and interested elected officials and water management/control districts have worked in collaboration to move forward the C-51 Reservoir project which has the potential to be effective at holding large quantities of water without excessive seepage due to the compact geological formations under it; and

WHEREAS, utilities that participate in the C-51 Reservoir Project could purchase capacity from the reservoir and presumably receive increased allocations for longer durations within modified Water Use Permits from the South Florida Water Management District; and

WHEREAS; a joint funding agreement between the utilities, coordinated through the Palm Beach County Procurement Division, would provide for an engineering fee in the not-to-exceed amount of \$150,000 for an independent consultant to evaluate and analyze many of the technical and financial parameters affecting the delivery of the project, and the City of Fort Lauderdale's proportionate cost share is calculated to be approximately \$18,750.00, unless a written amendment increases the amount of the study;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA

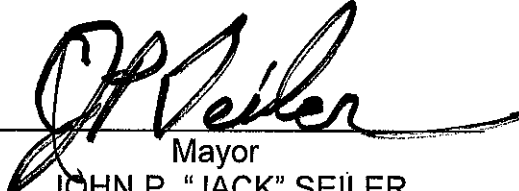
SECTION 1. A Joint Funding Agreement Related to a Third-Party Assessment of C-51 Reservoir Costs between Palm Beach County and Several Utilities is hereby approved, subject to City Attorney approval. A final copy of the Joint Funding Agreement will be attached hereto and made a part of this Resolution as Exhibit "A."

SECTION 2. The proper City officials are hereby authorized to execute the Joint Funding Agreement.

SECTION 3. That the office of the City Attorney shall review and approve as to form all documents prior to their execution by City officials.


SECTION 4. This Resolution shall be effective immediately upon its passage.

ADOPTED this the 17th day of December, 2013.



Mayor
JOHN P. "JACK" SEILER

ATTEST:



City Clerk
JONDA K. JOSEPH

L:\COMM 2013\Resos\December 17\13-232.docx

**JOINT FUNDING AGREEMENT RELATED TO A THIRD-PARTY ASSESSMENT OF
C-51 RESERVOIR COSTS**

THIS AGREEMENT is made and entered into this _____ day of _____, ____ by and among **PALM BEACH COUNTY**, a political subdivision of the State of Florida ("Palm Beach County"), **BROWARD COUNTY**, a political subdivision of the State of Florida ("Broward County"), **CITY OF SUNRISE**, a municipal corporation located in Broward County, Florida, organized and existing under the State of Florida ("Sunrise"), **CITY OF FORT LAUDERDALE**, a municipal corporation located in Broward County, Florida, organized and existing under the State of Florida ("Fort Lauderdale"), **CITY OF HALLANDALE BEACH**, a municipal corporation located in Broward County, Florida, organized and existing under the State of Florida ("Hallandale Beach"), **TOWN OF DAVIE**, a municipal corporation located in Broward County, Florida, organized and existing under the State of Florida ("Davie"), **CITY OF BOCA RATON**, a municipal corporation located in Palm Beach County, Florida, organized and existing under the State of Florida ("Boca Raton"), **CITY OF WEST PALM BEACH**, a municipal corporation located in Palm Beach County, Florida, organized and existing under the State of Florida ("West Palm Beach") **LAKE WORTH DRAINAGE DISTRICT**, a water control district located in Palm Beach County, Florida, organized and existing pursuant to the laws of Florida ("LWDD"), and the **CITY OF BOYNTON BEACH**, a municipal corporation located in Palm Beach County, Florida, organized and existing under the State of Florida ("Boynton Beach") all of which are hereinafter sometimes referred to as the "Parties," or individually referred to as a "Party."

RECITALS

WHEREAS, water resources in South Florida are limited and are projected to be insufficient to meet the long term future demands of the environment, industry, agriculture and public water supply; and

WHEREAS, a major reason for this limitation is the natural weather cycle of dry and wet seasons, and the fact that the regional drainage system releases large amounts of fresh water to tide during the wet season which then becomes unavailable to supplement water supplies during the dry season; and

WHEREAS, there are sections of land in central Palm Beach County that may be capable of efficiently storing large amounts of fresh water due to the unique geological structure; and

WHEREAS, the owners of these sections of land are currently mining it for aggregate and have proposed and designed a large reservoir known as the C-51 Reservoir to store excess fresh water during the wet season (the "C-51 Reservoir project"), which reservoir is capable of

mitigating much of the potentially unmet fresh water demand in Palm Beach and Broward Counties; and

WHEREAS, the Water Resource Task Forces of both Palm Beach and Broward Counties, the County Commissions of Palm Beach and Broward Counties, and a number of municipalities in both Counties have passed resolutions supporting the concept of building the C-51 Reservoir project; and

WHEREAS, the owners of the sections of land and mining operation as set forth above have performed a cost evaluation of both the capital and operating costs of the proposed C-51 Reservoir project; and

WHEREAS, public water suppliers would benefit from an independent cost evaluation study of the proposed C-51 Reservoir project (the "Study"), performed by a qualified engineering firm, to provide a reference point for potential negotiations; and

WHEREAS, Palm Beach County has agreed to be the lead governmental entity responsible for procuring and securing the services of a qualified engineering firm to perform the Study; and

WHEREAS, pursuant to the Consultant's Competitive Negotiations Act, Palm Beach County has engaged the firm of MWH Americas, Inc. (the "Study Engineer") to perform continuing general engineering services, and Palm Beach County intends to issue a task order to the Study Engineer to complete the Study; and

WHEREAS, the Parties agree to fund the costs of the independent cost evaluation (the "Study Costs") in accordance with this Agreement.

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, the Parties hereby agree as follows:

1. **Recitals.** The foregoing statements are true and correct and are incorporated herein by reference.
2. **Effective Date.** This Agreement shall become effective upon approval and execution by all Parties.
3. **Term.** The Term of this Agreement shall commence on the Effective Date and continue until the completion of the Study and the reimbursement of the Study Costs by all Parties; provided, however, if the term of this Agreement extends beyond a single fiscal year of the Parties, the continuation of this Agreement beyond the end of any fiscal year shall be subject to the appropriation and availability of funds of each of the Parties.
4. **Engagement of Study Engineer.** Palm Beach County shall issue a task order to the Study Engineer to perform the Scope of Services set forth in **Exhibit "A,"** which is attached hereto and

incorporated herein, not-to-exceed \$150,000.00. Palm Beach County shall not authorize any changes to the Scope of Work without first providing written notice to the Parties and receiving written authorization from the Parties, through each Party's Authorized Representative. A written amendment to this Agreement is required to increase the not-to-exceed amount of the Study. Palm Beach County will reimburse the Study Engineer for the Study Costs in accordance with its own policies and procedures. It is understood and agreed that Palm Beach County will employ the Study Engineer to perform the Study and none of the other Parties shall have any contractual obligations to the Study Engineer.

5. Reimbursement of Study Costs. The Parties agree to reimburse Palm Beach County for the Study Costs proportionate to their allocated share of the Study Costs as set forth in **Exhibit "B,"** which is attached hereto and incorporated herein. Following the completion of the Study, Palm Beach will invoice each Party for their proportionate share of the Study Costs. Each Party agrees to pay its proportionate share of the Study Costs and make payment to Palm Beach County within thirty (30) days from the date the bill is received by each Party. A past due notice will be mailed by Palm Beach County to any delinquent Party after thirty (30) days. If payment has not been received after sixty (60) days from the date the original bill was received by the Party, a one percent (1%) per month interest charge will be assessed on the outstanding balance.

6. Notice/Authorized Representatives. All notices provided for herein shall be in writing and transmitted by mail or by courier to the Authorized Representatives of each Party at the addresses set forth below:

Palm Beach County:

Bevin Beaudet, Director
Palm Beach County Water Utilities Department
8100 Forest Hill Boulevard
P.O. Box 16097
West Palm Beach, FL 33416-6097

Broward County:

Alan Garcia, Director
Broward County Water and Wastewater Services
2555 W. Copans Road
Pompano Beach, FL 33069

Sunrise:

Tim Welch
777 Sawgrass Corporate Parkway
Sunrise, FL 33325

Fort Lauderdale:

Hardeep Anand
100 N. Andrews Avenue
Fort Lauderdale, FL 33301

Hallandale Beach:

Earl King
630 NW 2 Street
Hallandale Beach, FL 33009

Davie:

Don Bayler
7351 S.W. 30th Street
Davie, FL 33324

Boca Raton:

Chris Helfrich
1401 Glades Road
Boca Raton, FL 33431

West Palm Beach:

Scott D. Kelly
401 Clematis Street
P.O. Box 3366
West Palm Beach, FL 33402

LWDD:

Boynton Beach:

7. Indemnification and Insurance. The Parties acknowledge the waiver of sovereign immunity for liability in tort contained in Florida Statutes 768.28, the State of Florida's partial waiver of sovereign immunity, and acknowledge that such statute permits actions at law to recover damages in tort for money damages up to the limits set forth in such statute for death, personal injury or damage to property caused by the negligent or wrongful acts or omissions of an employee acting within the scope of the employee's office or employment. To the extent permitted by law, the Parties agree to be responsible for all such claims and damages, to the extent and limits provided in Florida Statutes Section 768.28, arising from the actions of their respective employees. The Parties acknowledge that the foregoing shall not constitute an agreement by either party to indemnify the other, nor a waiver of sovereign immunity, nor a waiver of any defense the parties may have under such statute, nor as consent to be sued by third parties. The Parties are entities subject to Section 768.28, Florida Statutes, and each shall furnish the other with written verification of liability protection in accordance with state law prior to final execution of this Agreement.

8. Force Majeure. In the event that the performance of this Agreement by any Party to this Agreement is prevented or interrupted in consequence of any cause beyond the control of any Party, including, but not limited to, Acts of God or of the public enemy, war, national emergency, allocation of or other governmental restrictions upon the use or availability of labor or materials, rationing, civil insurrection, riot, disorder or demonstration, terrorism, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, or other casualty or disaster or catastrophe or water plant failures and sewer main breaks, no Party shall be liable for such non-performance.

9. Remedies. This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Palm Beach County. No remedy herein conferred is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter.

10. Successors and Assigns. Each Party binds itself and its partners, successors, executors, administrators and assigns to the other Parties and to the partners, successors, executors, administrators and assigns of such other Parties, in respect to all covenants of this Agreement. No Party shall assign, sublet, convey, or transfer its interest in this Agreement without prior written consent of the other Parties.

11. Waiver. The failure of any Party to insist on the strict performance of any of the agreements, terms, covenants and conditions hereof shall not be deemed a waiver of any rights or remedies that said Party may have for any subsequent breach, default, or non-performance, and said Party's right to insist on strict performance of this Agreement shall not be affected by any previous waiver of course or dealing.

12. Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable by any court of competent jurisdiction, then the remainder of this Agreement, or the application of such terms or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

13. Amendment and Modification. This Agreement may only be amended, modified, changed, supplemented or discharged by an instrument in writing, executed by the Parties with the same formality and of equal dignity herewith.

14. Entirety of Agreement. Parties agree that this Agreement and any Exhibits hereto set forth the entire agreement among the Parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the Parties.

15. Palm Beach County Office of the Inspector General. Pursuant to Palm Beach County Code, Sections 2-421 through 2-440, as amended, Palm Beach County's Office of Inspector General is

authorized to have the power to review past, present and proposed County contracts, transactions, accounts and records. The Inspector General's authority includes, but is not limited to, the power to audit, investigate, monitor, and inspect the activities of entities contracting with the County, or anyone acting on their behalf, in order to ensure compliance with contract requirements and to detect corruption and fraud. Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be a violation of Palm Beach County Code, Section 2-421 through 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

16. No Third Party Beneficiary. No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a Party to this Agreement, including but not limited to any citizen or employees of the Parties.

17. Non-Discrimination. Palm Beach County agrees and certifies that it shall comply with Title VII of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R92-13, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, disability, or gender identity or expression, during their performance of this Agreement.

18. Incorporation by Reference. The attached Exhibits A and B are incorporated into and made a part of this Agreement.

19. Representation of Authority. Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full and legal authority.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the Parties have executed or have caused this Agreement, with the named Exhibits attached, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

ATTEST:

**SHARON R. BOCK
CLERK AND COMPTRROLLER**

**PALM BEACH COUNTY, BY ITS
BOARD OF COUNTY
COMMISSIONERS**

By: _____
Deputy Clerk

By: _____
_____, Mayor
_____ day of _____, 2013

(SEAL)

**APPROVED AS TO FORM AND TO
LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS AND
CONDITIONS**

By: _____
County Attorney

By: _____
Director of Water Utilities

[other parties to add their signature page]

AGREEMENT BY AND AMONG PALM BEACH COUNTY, BROWARD COUNTY, CITY OF SUNRISE, CITY OF FORT LAUDERDALE, CITY OF HALLANDALE BEACH, TOWN OF DAVIE, CITY OF BOCA RATON, and CITY OF WEST PALM BEACH, FOR JOINT FUNDING OF A THIRD-PARTY ASSESSMENT OF C-51 RESERVOIR COSTS

BROWARD COUNTY

ATTEST:

BROWARD COUNTY, by and through
its Board of County Commissioners

Broward County Administrator, as
Ex-Officio Clerk of the Broward County
Board of County Commissioners

By _____
Mayor

____ day of _____, 20__

Insurance requirements
approved by Broward County
Risk Management Division

Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By _____
Signature (Date)

By _____
Al A. DiCalvo (Date)
Assistant County Attorney

Print Name and Title above

Michael J. Kerr
Chief Trial Counsel